



**MILPITAS CITY COUNCIL MEETING AGENDA
NOVEMBER 1, 2005**

**6:00 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)
455 E. CALAVERAS BOULEVARD**

SUMMARY OF CONTENTS

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

**CONFERENCE WITH LABOR NEGOTIATORS – COLLECTIVE BARGAINING
(Pursuant to California Government Code Section 54957.6)**

City Negotiators: Art Hartinger, Ed Kreisberg, Carmen Valdez

Employee Organizations: Milpitas Police Officers Association (MPOA), International Association of Firefighters (IAFF), Protech

Under Negotiation: Wages, Hours, Benefits, Working Conditions

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

(Pursuant to California Government Code Section 54956.8)

Property: 110 Meadowland Dr., Milpitas, California

Agency Negotiators: City of Milpitas (Steve Mattas). Negotiating Party: Williamson /Wilson

Under negotiation: Terms and Conditions for Disposition of property

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

(Pursuant to California Government Code Section 54956.9(a))

City of Milpitas v. Turner Construction et al., Santa Clara County Superior Court Case No. 103CV815946 Consolidated with Case No. 103CV008400

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Govt. Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. INVOCATION (Vice Mayor Gomez)

VI. APPROVAL OF MINUTES (October 18, 2005)

VII. SCHEDULE OF MEETINGS

VIII. PRESENTATIONS

Proclamations

2005 Veterans Day on November 11

Veterans of Foreign Wars of the United States – Buddy Poppy Promotional Month

IX. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

X. ANNOUNCEMENTS

XI. ANNOUNCEMENT OF CONFLICT OF INTEREST

XII. APPROVAL OF AGENDA

XIII. CONSENT CALENDAR (Items with Asterisks)

XIV. PUBLIC HEARING

1. **Revisions to the Milpitas Municipal Code, Title X, Chapter 2, Tree and Planting, to Add a Heritage Tree Program, ZT2005-5, Ordinance 201.4 (Staff Contact: Dennis Carrington, 586-3275)**

XV. UNFINISHED BUSINESS (NONE)

XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor/Chair

RA2. Roll Call

RA3. Approval of Minutes (October 18, 2005)

RA4. Approval of Agenda and Consent Calendar

RA5. Receive Progress Report on Library, and Midtown East Parking Garage, and Approve the Design Development Phase for the Library, Project No's. 8161 & 8162 (Staff Contact: Mark Rogge, 586-3403)

RA6. Acceptance of the City's Comprehensive Annual Financial Report, Component Unit Financial Statements, and Other Related Annual Audited Reports For The Fiscal Year Ended June 30, 2005 (Staff Contact: Jane Corpus, 586-3125)

RA7. City of Milpitas Financial Status Report for the Three Months Ended September 30, 2005 (Staff Contact: Emma Karlen, 586-3145)

*** RA8. Approve Budget Appropriation; N. Main Street Utility Improvements, Project No. 8153 (Staff Contact: Mark Rogge, 586-3403)**

*** RA9. Award Construction Contract: Police Evidence Freezer Project No. 8159, All Temp Engineering, Inc. (Staff Contact: Steve Erickson, 586-3414)**

*** RA10. Approve a Contract Change Order for Mechanical Shades and Support System, Project No. 8135 (Staff Contact: Steve Erickson, 586-3414/Mark Rogge, 586-3403)**

- * RA11. Adopt Resolution Granting Initial Acceptance: 2005 ADA Sidewalk Ramps, Project No. 4226 and Building Improvements, Project No. 8135 (Staff Contact: Doug De Vries, 586-3313)
- * RA12. Adopt Resolution Granting Initial Acceptance: Utility Relocation Project Weller Lane and Winsor Street, Phase I, Project 8153 (Staff Contact: Steve Erickson, 586-3414)
- * RA13. City of Milpitas Investment Portfolio Status Report for the Quarter Ended September 30, 2005 (Staff Contact: Emma Karlen 586-3145)
- RA14. Agency Adjournment

XVII. REPORTS OF OFFICERS, COMMISSIONS, AND COMMITTEES

City Council

- 2. Mayor's Appointments to the Council Open Government Subcommittee (Contact: Mayor Esteves, 586-3029)
- 3. Mayor's Request To Review Letter From San Jose Mayor Regarding Hurricane Katrina Response (Contact: Mayor Esteves, 586-3029)
- 4. Request by Councilmember Polanski for the City Council to Waive the Attorney-Client Privilege for City Attorney Memorandum Related to Proposed Liberty Property Development (Contact: Councilmember Polanski, 586-3024)

Parks, Recreation, and Cultural Resources Commission

- 5. Review, Consider, and Provide Staff Direction on "No Smoking" in Parks Signage and Possible Ordinance (Staff Contact: Bonnie Greiner, 586-3227)

XVIII. NEW BUSINESS (NONE)

XIX. ORDINANCES (NONE)

XX. RESOLUTIONS

- * 6. Adopt Resolution to Elect Coverage Under the Public Employees Medical and Hospital Care Act for the Members of the Milpitas Supervisors Association (MSA) (Staff Contact: Carmen Valdez, 586-3086)
- * 7. Adopt Resolution To Elect Coverage Under The Public Employees Medical And Hospital Care Act For The Members Of The Milpitas Employees Association (MEA) (Staff Contact: Carmen Valdez, 586-3086)

XXI. BIDS AND CONTRACTS

- * 8. Authorize City Manager To Execute Agreement Amendment: Damon S. Williams Associates (DSWA), Project No. 7100 (Staff Contact: Doug De Vries, 586-3313)
- * 9. Approve Contract with CSG Consultants For Fire Inspection Services (Staff Contact: Patricia Joki, 586-3370)

- * 10. **Authorize City Manager To Execute Agreement With Finite Matters Ltd. for the PatternStream Budget Publishing System and Implementation Services (Staff Contact: Emma Karlen, 586-3145)**
- * 11. **Approve Agreement With Tax Compliance Services For Transient Occupancy Tax Auditing And Consulting Services (Staff Contact: Emma Karlen, 586-3145)**
- * 12. **Award the Bid for Painting the Corporation Yard and Fleet Maintenance Buildings (Staff Contact: Chris Schroeder, 586-3161)**

XXII. CLAIMS AND DEMANDS

- * 13. **Approve Five Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Chris Schroeder, 586-3161)**

XXIII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, NOVEMBER 15, 2005, AT 7:00 P.M.**

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. **FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE OPEN GOVERNMENT COMMISSION** at the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
E-mail: rpioroda@ci.milpitas.ca.gov / Fax: 408-586-3030 / Phone: 408-586-3040

A free copy of the Open Government Ordinance is available from the City Clerk's Office or by visiting the City's website www.ci.milpitas.ca.gov, select Open Government Ordinance under News Features.

BECOME A CITY COMMISSIONER!

Currently, there are openings on the following Commissions:
Community Advisory Commission (alternate)
Economic Development Commission (rep. for Hotel Industry)
Recycling and Source Reduction Commission (alternate)
Planning Commission

Applications are available online at www.ci.milpitas.ca.gov or outside the City Council Chambers. Contact the City Clerk's Office (586-3003) for information.

AGENDA REPORTS

XIV. PUBLIC HEARING

1. Revisions To The Milpitas Municipal Code, Title X, Chapter 2, Tree and Planting, To Add a Heritage Tree Program, ZT2005-5, Ordinance 201.4 (Staff Contact: Dennis Carrington, 586-3275)

Background: The Community Advisory Commission (CAC) work plan includes a heritage tree program to promote tree protection awareness. Staff has prepared an amendment to the City of Milpitas Tree and Planting Ordinance to include the Heritage Tree Program.

On October 5, 2005, the CAC recommended that the City Council amend the City of Milpitas Tree and Planting Ordinance to include the Heritage Tree Program.

On October 12, 2005, the Planning Commission recommended that the City Council amend the City of Milpitas Tree and Planting Ordinance to include the Heritage Tree Program.

Discussion:

The amendments would incorporate a new Heritage Tree Program into the existing “Tree and Planting” chapter (X-2) of the Milpitas Municipal Code. The program would increase public awareness of the important contribution of trees to the residents of Milpitas.

Key changes include:

- Defining a Heritage Tree Program as a program established in accordance with the provisions of the Tree and Planting Chapter of the Municipal Code to recognize and designate individual trees or groves of trees to promote appreciation of the trees and their benefit to the community, and to nurture and protect the trees as part of the City’s heritage.
- A Heritage Tree designation may be applied by a resolution of the City Council to individual trees or a grove of trees of any size or species that are distinctive, of special historical value or of significant community benefit.
- A tree or grove of trees may be designated as a heritage tree or heritage tree grove upon a finding that it is unique and of importance to the community due to any of the following factors:
 - 1) It is an outstanding specimen or grove of a desirable species.
 - 2) It is one of the largest or oldest trees or grove of trees in Milpitas.
 - 3) The tree or grove of trees possesses distinctive form, size, age, location and/or historical significance.
- A heritage tree designation may be requested by any person and with the written consent of the property owner.
- The Tree Replacement Fund is being removed from the ordinance because the cost of establishing a special revenue fund outweighs its benefits and is not consistent with how the City treats other permit fees and fines.

The proposed changes to the Municipal Code, summary of changes and Heritage Tree Program Nomination Form are attached.

Recommendation: Waive first reading beyond the title and introduce Ordinance 201.4 amending the City of Milpitas Tree and Planting Ordinance to include the Heritage Tree Program as shown in the staff report.

XV. UNFINISHED BUSINESS (NONE)

XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor/Chair

RA2. Roll Call

RA3. Approval of Minutes (October 18, 2005)

RA4. Approval of Agenda and Consent Calendar

RA5. Receive Progress Report on Library, and Midtown East Parking Garage, and Approve the Design Development Phase for the Library, Project No's. 8161 & 8162 (Staff Contact: Mark Rogge 586-3403)

Background: The architect for the library has completed the 100% Design Development phase, and the architect for the east-parking garage is continuing with development of the 60% Construction Documents. The final Design Development phase for the library is now ready for Council approval. Staff will provide a brief presentation on the design progress of these projects.

Recommendation:

1. Approve the Library 100% Design Development phase.
2. Note, receive, and file the progress report on the design of the library and Midtown East parking garages.

RA6. Acceptance of the City's Comprehensive Annual Financial Report, Component Unit Financial Statements, and Other Related Annual Audited Reports For The Fiscal Year Ended June 30, 2005 (Staff Contact: Jane Corpus, 586-3125)

Background: Transmitted herewith is the Comprehensive Annual Financial Report (CAFR) of the City of Milpitas, Milpitas Redevelopment Agency Component Unit Financial Statements, Single Audit Report, Bicycle/Pedestrian Projects Financial Statements, Agreed Upon Procedures Report on Compliance with the Appropriations Limit Increment and the Memorandum on Internal Control Structure for the fiscal year ended June 30, 2005.

Comprehensive Annual Financial Report (CAFR) of the City of Milpitas

The CAFR presents the operations and financial activity of all the City's various funds. It includes an unqualified audit opinion from Maze & Associates, the City's external auditors, that the financial statements present fairly the results of operations for the year ended June 30, 2005, in conformance with Generally Accepted Accounting Principles (GAAP).

Milpitas Redevelopment Agency Component Unit Financial Statements

The Milpitas Redevelopment Agency is a component unit of the City of Milpitas. The accompanying component unit financial statements present the operations and financial activity of the Milpitas Redevelopment Agency including the Agency's redevelopment project fund and housing reserve fund. The Agency's Component Unit Financial Statements include an unqualified audit opinion from Maze & Associates, the Agency's external auditors, that the financial statements present fairly the results of operations for the year ended June 30, 2005, in conformance with GAAP. The report from Maze & Associates also includes a Compliance

Report indicating that the Agency complied, in all material respects, with provisions of laws and regulations contained in the Guidelines for Compliance Audits of California Redevelopment Agencies issued by the State Controller's Office.

Single Audit Report

The Single Audit Report for the fiscal year ended June 30, 2005 includes the Summary of Findings and Questioned Costs, Schedule of Expenditures of Federal Awards, Report on Compliance and on Internal Control Over Financial Reporting Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards, and the Report on Compliance and Internal Control Over Compliance Applicable to Each Major Federal Award Program. These reports did not disclose any reportable conditions, or material weaknesses. The results of their tests disclosed no instances of noncompliance.

Bicycle/Pedestrian Projects Financial Statements

The Bicycle/Pedestrian Projects Financial Statements includes Bicycle/Pedestrian Projects that were developed using Transportation Development Act (TDA) grants. The auditor issued an unqualified opinion on these statements.

Agreed Upon Procedures Report on Compliance with the Appropriations Limit Increment

This report shows the auditor applied specific procedures to validate the City's Appropriations Limit calculations.

Memorandum on Internal Control Structure

Under generally accepted auditing standards, our auditors are encouraged to report certain matters regarding the City's internal control structure. The City's auditors have provided such a report in their Memorandum on Internal Control Structure ("Management Letter") for the Year Ended June 30, 2005. This report includes management response to the auditor's letter. It should be noted that the auditors do not view any of their comments as material weaknesses or significant deficiencies. Rather, they represent noteworthy items from an objective and independent perspective.

Recommendation: Note receipt and file of CAFR and other audit reports.

RA7. City of Milpitas Financial Status Report For The Three Months Ended September 30, 2005 (Staff Contact: Emma Karlen, 586-3145)

Background: The Finance Department will present a review of the City's financial status for the three months ended September 30, 2005.

Recommendation: Receive financial status report.

***RA8. Approve Budget Appropriation; N. Main Street Utility Improvements, Project No. 8153 (Staff Contact: Mark Rogge, 586-3403)**

Background: Additional infrastructure work scope has been identified to be incorporated in the Main Street Utility Improvement Project. Some of this work is identified in future Capital Improvement Projects. Other work will be necessary due to future Midtown projects because they are key utilities segments for water, storm drainage and data lines which have been identified in various Master Plan reports. It is more economical to perform this work in concert with work associated with the North Main Street Development projects, than to do it later in piece meal fashion.

Critical work includes the construction of a new storm main on Main Street from 237 to Weller Lane and northerly of Weller Lane to the Ford/Wrigley Creek Channel adjacent to Marylinn

Drive. The proposed storm drain is needed to alleviate the nuisance flooding when rainfall runoff exceeds the capacity of the current storm drainage facilities, which are in excess of 50 years old.

Another needed system improvement includes boring and jacking a new water main on Carlo Street under existing railroad tracks. This work is necessary to prevent a pressure deficiency in the future Midtown area. This improvement is currently identified in the 2005-2010 CIP as the Railroad Avenue/Carlo Street Pipeline Extensions project; however it is scheduled for the Fiscal Year 2006-07. Staff recommends this portion be done in concert with other street improvements to avoid future disruption and street repair.

The City's information network provides data to and from traffic signals and cameras as well as Internet and other data needs of the City. A new conduit crossing under State Route 237 near Abel is necessary to complete an important link of the system. Staff recommends that this work be done at this time since jacking and boring equipment will be necessary, which is similar to that needed for water main crossing described above.

Financing for these project improvements is available from the Storm-Drain Fund, Water Fund, Developer reimbursements and the 2003 RDA Tax Allocation Bonds. Council approval of this budget appropriation is recommended. There are sufficient balances in the funds to appropriate the recommended amounts.

Recommendation: Approve Budget Appropriations as follows: \$400,000 from the Storm Drain Fund; \$350,000 from the Water Fund; \$105,000 from developer reimbursements, and \$100,000 from the 2003 RDA Tax Allocation Bonds for N. Main Street utility improvements.

***RA9. Award Construction Contract: Police Evidence Freezer Project No. 8159, All Temp Engineering, Inc. (Staff Contact: Steve Erickson, 586-3414)**

Background: This project, which is included in the current Capital Improvement Program (CIP), will provide a walk-in evidence freezer in the basement of the Police Building for the purpose of preserving and storing biological evidence, and is required by recent changes in law regarding the storage and handling of evidence.

On August 2nd, 2005 staff obtained authorization from the City Council to re-advertise the project. The project was advertised, and no bid proposals were received. The City Attorney advised that Section 20166 of the Public Contract Code allows the City to negotiate cost proposals from contractors when bids are not received. Staff requested proposals from specialty contractors for the evidence freezer work, and three proposals ranging from \$94,880 to \$136,000 were received. All Temp Engineering submitted the lowest responsive proposal for the work. Staff recommends awarding the construction contract to All Temp Engineering in the amount of \$94,800. Funds are available in the project budget for this work.

Recommendation: Award construction contract for the Police Evidence Freezer, Project No. 8159, to All Temp Engineering, Inc. in the amount of \$94,800.

***RA10. Approve a Contract Change Order for Mechanical Shades and Support System, Project 8135 (Staff Contact: Steve Erickson, 586-3414/Mark Rogge, 586-3403)**

Background: On December 20, 2005 City Council approved the installation of motorized shades for the first floor lobby of the City Hall Complex. This installation will reduce the sun glare for both the City employees and the public transacting business in the lobby area during the winter months. Staff has completed the majority of the shade installation, with the exception of the westerly portion of the front lobby due to a conflict uncovered during installation, with the rotunda structural support. A modification to the westerly mechanical shade system will be needed in order to install the shade. A contract change order for this shade modification in the

amount of \$8,000 is needed to complete this project. Sufficient funds are available in the project for this work.

Recommendation: Approve Contract Change Order for mechanical shade system modification.

***RA11. Adopt Resolution Granting Initial Acceptance: 2005 ADA Sidewalk Ramps, Project No. 4226 & Building Improvements, Project No. 8135, (Staff Contact, Doug De Vries, 586-3313)**

Background: This project provided for installation of sidewalk ramps, sidewalks and pavement delineation along Escuela Parkway between Russell Lane and Washington Drive and replacement of concrete reinforced driveways for Fire Station #2 and Fire Station #3. The City Council awarded the project to JJR Construction, Inc. on August 8, 2005. The project has been successfully completed. Staffs recommends that Council grant an initial acceptance and authorize the reduction of the contractor's faithful performance bond to 10% of the contract amount or \$8,462.

Recommendation: Adopt the resolution granting initial acceptance of the project subject to the one-year warranty period and reduction of the faithful performance bond to \$8,462.

***RA12. Adopt Resolution Granting Initial Acceptance: Utility Relocation Project Weller Lane and Winsor Street, Phase I, Project 8153 (Staff Contact Steve Erickson, 586-3414)**

Background: This project removed and relocated existing underground utilities on Weller Lane and Winsor Street in preparation for construction of the new library and Midtown east parking garage. The project was awarded to Pacific Underground on April 5, 2005, and the contractor has completed the project work. Therefore, an initial acceptance may be granted and the contractor's faithful performance bond may be reduced to \$66,847.86, which is 10% of the contract amount.

Recommendation: Adopt the resolution granting initial acceptance of the project subject to the one-year warranty period and reduction of the faithful performance bond to \$66,847.86.

***RA13. City of Milpitas Investment Portfolio Status Report for the Quarter Ended September 30, 2005 (Staff contact: Emma Karlen 586-3145)**

Background: In compliance with the State of California Government Code and the City's Investment policy, the City of Milpitas Investment Report for the quarter ended September 30, 2005 is submitted for your review and acceptance.

The Portfolio Summary Report included in the Council's packet provides a summary of the City's investments by type. It lists the par value, market value, book value, percentage of portfolio, term, days to maturity and the equivalent yields for each type of investment. The Portfolio Details Report provides the same information for each individual investment in the City's portfolio as of September 30, 2005.

As of September 30, 2005, the principal cost and market value of the City's investment portfolio was \$227,387,150.52 and \$225,435,377.84 respectively. When market interest rates increase after an investment is purchased, the market value of that investment decreases. Conversely, when market interest rates decline after an investment is purchased, the market value of that investment increases. If the investments are not sold prior to the maturity date, there is no market risk. Therefore, in accordance with the City's investment policy, all investments are held until maturity to ensure the return of all invested principal.

The City's effective rate of return for the period ended September 30, 2005 was 2.96%. The comparative benchmarks for the same period were 3.07% for LAIF (Local Agency Investment Fund) and 3.17% for the 12-month average yield of the 2-year Treasury Note. Excluding the

long-term GNMA securities and Repurchase Investment Agreement, the weighted average maturity of the portfolio was 475 days.

The investment portfolio is in compliance with the City's investment policy. A combination of securities maturing, new revenues, and tax receipts will adequately cover the anticipated cash flow needs for the next six months. Cash flow requirements are continually monitored and are considered paramount in the selection of maturity dates of securities.

Recommendation: It is recommended that the City Council/Agency Board note, receipt, and file the investment report for the quarter ended September 30, 2005.

RA14. Agency Adjournment

XVII. REPORTS OF OFFICERS, COMMISSIONS, AND COMMITTEES

City Council

2. Mayor's Appointments to the Council Open Government Subcommittee (Contact: Mayor Esteves, 586-3029)

Background: Mayor Esteves will make the appointment of two City Councilmembers to serve as the new Open Government Subcommittee.

Recommendation: Move to approve Mayor Esteves' appointments.

3. Mayor's Request To Review Letter From San Jose Mayor Regarding Hurricane Katrina Response (Contact: Mayor Esteves, 586-3029)

Background: The City Council adopted eight actions in response to Hurricane Katrina, the disaster that impacted so many along the U.S. Gulf Coast. One of the actions authorized was to make a donation of \$5,000 to the American Red Cross.

Separately, San Jose Mayor Ron Gonzales initiated a request of Mayors in Santa Clara County in a letter on September 12th, for donations to the American Red Cross in the immediate aftermath of Hurricane Katrina. The request was premised on the fact that San Jose could offer housing to some hurricane evacuees (at a dormitory at San Jose State University). Approximately 100 people were anticipated to be housed there. Donations from cities throughout the county to the American Red Cross were solicited, which could then be used to provide resources to clothe, feed and shelter these individuals. The City of San Jose authorized a donation in the amount of \$500,000 (approximately 50 cents/ resident).

Recommendation: Discuss the request. Consider any action brought forward by the Mayor.

4. Request by Councilmember Polanski for the City Council to Waive the Attorney-Client Privilege For City Attorney Memorandum Related to Proposed Liberty Property Development (Contact: Councilmember Polanski, 586-3024)

Background: On October 12, 2005, the City Attorney's Office delivered an attorney-client privileged memo to the City Council regarding an application for a General Plan Amendment. Councilmember Polanski requests that the City Council waive the attorney-client privilege related to the memo.

Discussion: All memos issued by the City Attorney's Office to the City Council or staff are privileged and confidential communications under the attorney-client privilege except for memos which provide advice to the City Council and staff regarding the Milpitas Open Government

Ordinance, the California Brown Act, the California Public Records Act and the California Political Reform Act.

The October 12, 2005 memo in question does not relate to any of the exceptions listed above where waiver of the privilege would be automatic. Therefore, the City Council must approve by majority vote of its members to waive the attorney-client privilege related to the memo

Recommendation: Motion to waive the attorney-client privilege on the City Attorney's October 12, 2005 memo.

Parks, Recreation, and Cultural Arts Commission

5. Review, Consider, and Provide Staff Direction on "No Smoking in Parks" Signage and Possible Ordinance (Staff Contact: Bonnie Greiner, 586-3227)

Background: At the August 1, 2005 Parks, Recreation and Cultural Resources Commission (PRCRC) meeting, the Commission discussed Smoking in Public Parks. After much discussion, the Commission directed to staff to return with this item in October for further discussion. At the August 16, 2005 City Council meeting, the Council requested that the Parks, Recreation, and Cultural Resources Commission (PRCRC) continue its own investigation and gauge citizen concerns on the subject of additional regulation of smoking in and around public parks.

At the October 3, 2005 PRCRC meeting, the Commission reviewed this topic and recommends to the City Council to structure an ordinance to ban smoking in the parks and post signage to educate the public as to the California Health and Safety Code, Section 104495 Restriction of Smoking at Public Play Grounds. This State code was adopted in 2002 and has an attached \$250.00 fine.

Attached are the minutes from the August 1, 16 and October 3, 2005 PRCRC meetings for your review, and a copy of the California Health and Safety Code, Section 104495 Restriction of Smoking at Public Play Grounds.

Recommendation: Review, consider, and provide staff direction on posting "No Smoking" signs in City parks and a possible city ordinance.

XVIII. NEW BUSINESS (NONE)

XIX. ORDINANCES (NONE)

XX. RESOLUTIONS

***6. Adopt Resolution to Elect Coverage Under the Public Employees Medical and Hospital Care Act for the Members of the Milpitas Supervisors Association (MSA) (Staff Contact: Carmen Valdez, 586-3086)**

Background: The CalPERS program was established in 1967 by the Public Employees Retirement System (PERS) to provide health coverage to State employees, and was later expanded to include other public agencies. CalPERS currently offers four (4) plans, two HMO plans (Blue Shield and Kaiser) for local coverage and two PPO plans (PERS Care and PERS Choice) for nationwide coverage.

During the past two (2) years the City has been negotiating with the Milpitas Supervisors Association (MSA) on the feasibility of their membership moving to the Citywide CalPERS medical plan. Negotiations began when the group shared their concern with the lack of coverage for retirees and employees that live outside of the Kaiser "S" Plan area. The Kaiser "S" plan, a

local HMO, is now the only remaining medical plan available to MSA employees and retirees since other medical plans have all cancelled coverage due to low enrollment. MSA's members and retirees are no longer provided with out-of-area or nationwide services. The CalPERS plan satisfies MSA's interests in both additional plan choices and out-of-area coverage.

In addition to the choice of health plans available, other benefits for participating in the PERS Medical Program include:

- PERS' purchasing ability;
- The ability to spread the risk among a large group of participants;
- The ability to cover a wide geographical area;
- The ability to cover participants into retirement, and
- The reduction of administrative workload for City staff.

There will be an increase in the costs to the City of approximately \$2,718 annually with the move of the MSA group to the CalPERS program. The City will also provide the same vision services to MSA as offered to the rest of the City's employees groups.

Recommendation: Adopt a resolution to elect coverage under the Public Employees Medical and Hospital Care Act for the members of the Milpitas Supervisors Association to be effective January 1, 2006.

***7. Adopt Resolution To Elect Coverage Under The Public Employees Medical And Hospital Care Act For The Members Of The Milpitas Employees Association (MEA) (Staff Contact: Carmen Valdez, 586-3086)**

Background: The CalPERS program was established in 1967 by the Public Employees Retirement System (PERS) to provide health coverage to State employees, and was later expanded to include other public agencies. CalPERS currently offers four (4) plans, two HMO plans (Blue Shield and Kaiser) for local coverage and two PPO plans (PERS Care and PERS Choice) for nationwide coverage.

During the past two (2) years the City has been negotiating with the Milpitas Employee Association (MEA) on the feasibility of their membership moving to the Citywide CalPERS medical plan. Negotiations began when the group shared their concern with the lack of coverage for retirees and employees that live outside of the Kaiser "S" Plan area. The Kaiser "S" plan, a local HMO, is now the only remaining medical plan available to MEA employees and retirees since other medical plans have all cancelled coverage due to low enrollment. MEA's members and retirees are no longer provided with out-of-area or nationwide services. The CalPERS plan satisfies MEA's interests in both additional plan choices and out-of-area coverage.

In addition to the choice of health plans available, other benefits for participating in the PERS Medical Program include:

- PERS' purchasing ability;
- The ability to spread the risk among a large group of participants;
- The ability to cover a wide geographical area;
- The ability to cover participants into retirement, and
- The reduction of administrative workload for City staff.

There will be an increase in the costs to the City of approximately \$5,730 annually with the move of the MEA group to the CalPERS program. The City will also provide the same vision services to MEA as offered to the rest of the City's employees groups.

Recommendation: Adopt a resolution to elect coverage under the Public Employees Medical and Hospital Care Act for the members of the Milpitas Employee Association to be effective January 1, 2006.

XXI. BIDS AND CONTRACTS

- *8. Authorize City Manager To Execute Agreement Amendment: Damon S. Williams Associates (DSWA), Project No. 7100 (Staff Contact: Doug De Vries, 586-3313)**

Background: On August 3rd, 2004, City Council awarded a consultant contract to Damon S. Williams Associates (DSWA) to develop a strategic plan for water system seismic improvements. This contract evaluates the need for improvements that would increase the reliability of the water system and the preparedness of the City's emergency response capability after a seismic event. This work assists the City in implementing cost-effective mitigation activities as part of a pre-disaster hazard mitigation program.

Staff recommends that DSWA perform additional services to evaluate subsurface conditions and develop a site-specific classification of liquefaction potential of soil at South Milpitas Blvd between Calaveras Blvd and Yosemite Drive. The results of this evaluation will be used to determine the pipe design requirements for Project 7098: South Milpitas Blvd Water Line Replacement.

In addition to this task, DSWA will develop a liquefaction potential evaluation procedure manual that will be used by the City to evaluate liquefaction potential of soil at future capital improvement project sites.

An agreement amendment is proposed for these additional services. Staff has negotiated a scope and fee for these services not to exceed \$39,606, which is considered reasonable for the work. There are sufficient funds in the project budget to cover this additional expense.

Recommendation: Authorize the City Manager to execute the agreement amendment with DSWA, in the amount of \$39,606, subject to approval as to form by the City Attorney.

- *9. Approve Contract with CSG For Fire Inspection Services (Staff Contact: Patricia Joki, 586-3370)**

Summary: Approve a contract between CSG Consultants, Inc. and the City of Milpitas in an amount not to exceed \$33,600 for Fire Department inspection services.

Background: The Bureau of Fire Prevention has two budgeted Fire Prevention Inspector positions. These individuals perform life-safety inspections for State mandated and locally permitted occupancies. In January 2005 one of the Fire Prevention Inspectors retired. Due to budget constraints, the position was not funded. Although cross training and use of all staff partially filled this gap, increase in development activity will result in staff being unable to complete the required inspections for the 2005 calendar year. Contract inspectors, who are qualified and experienced in the life-safety codes, will assist the Department in meeting this obligation.

Sufficient resources exist within the Fire Department's budget to fund this request.

Fire staff are exploring cost-neutral alternatives to meet this inspection obligation for the 2006 calendar year.

Recommendation: Approve request to contract fire inspection services between the City and CSG Consultants, Inc in an amount not to exceed \$33,600, subject to approval as to form by the City Attorney.

***10. Authorize The City Manager To Execute Agreement With Finite Matters Ltd. For The PatternStream Budget Publishing System And Implementation Services (Staff Contact: Emma Karlen, 586-3145)**

Background: Part of the work plan for the Finance System Capital Improvement Project (Project No. 8107) is to upgrade the Budget Preparation system in FY 2005-06. The current Budget system does not have publishing capability. In order to assemble the Annual Operating Budget and the department workbooks in publishable form, the entire process is labor intensive. It requires putting together files using different formats such as Excel, Word and the Brass Budget system reports and manual input of page numbers. Consequently, the final budget document cannot be distributed electronically as it is composed of various files.

Finance worked with Information Services Department to search for a publishing software system that can be easily adaptable to our budget system. The publishing software should have minimal maintenance costs after the initial investment and the provider should be familiar with governmental budgets. The proposal submitted by Finite Matters Ltd. (FML) for their PatternStream publishing system meets our criteria. FML had good results in deploying and implementing PatternStream in many counties and cities. In particular, both the Counties of Santa Clara and San Mateo, which implemented the PatternStream publishing software, also have Brass Budget system, the same budget system utilized by the City. The capability, speed, and minimal processing steps of PatternStream as demonstrated by a site visit to the County of Santa Clara were impressive.

Based on the proposal, staff estimates that the cost to purchase PatternStream data publishing system, which includes the software license, initial consulting and implementation, and training, will not exceed \$65,000. FML is committed to meeting the City's timeline to enable us to prepare the FY 06-07 operating budget using PatternStream. There are sufficient funds available in the Finance System Capital Improvement Project (Project No. 8107) for this service.

Recommendation: Authorize the City Manager to execute agreement with Finite Matters Ltd. for PatternStream budgeting publishing system and implementation services, subject as to form by the City Attorney.

***11. Approve Agreement With Tax Compliance Services For Transient Occupancy Tax Auditing And Consulting Services (Staff contact: Emma Karlen, 586-3145)**

Background: In March 2000, the City entered into an agreement with Tax Compliance Services (TCS) to provide consultation and auditing services of the City's transient occupancy tax revenues. TCS has been instrumental in assisting staff with transient occupancy tax compliance issues and conducting training for hotel operators. The audits have resulted in findings of more than \$423,000 missed revenues. The most recent audit found that most hotels are in compliance. The audit results clearly demonstrate a successful joint effort in training local operators on the City's ordinance and enabling the City to collect revenue timely and accurately. There are currently 19 hotels/motels within the City of Milpitas that file their returns monthly. The most recent contract with TCS has expired. TCS has proposed to continue its service for 3 more years, at a fixed fee of \$17,500 per year. The City collects approximately \$5 million transient occupancy tax annually. An audit finding of 1% error due to under reporting will more than offset the audit and consultant fee.

Recommendation: Approve the agreement with Tax Compliance Services to provide transient occupancy tax auditing and consulting services, subject to approval as to form by the City Attorney.

***12. Award the Bid for Painting the Corporation Yard and Fleet Maintenance Buildings (Staff Contact: Chris Schroeder, 586-3161)**

Background: On September 28, 2005 staff went out to bid to paint the Corporation Yard and Fleet Maintenance buildings. The Invitation for Bid went to Thirty-One (31) vendors on Purchasing's vendor list, seven (7) responded. The following is a recap of the bids received.

<u>Bidder</u>	<u>Bid</u>
De Martinez Painting, Inc.	\$60,250.
R.G. Painting	60,500.
Diamond Painting	89,000.
H & M Painting	90,000.
R. Brothers Painting	91,600.
A & A Painting	103,900.
Signature Painting	\$107,000.

(There are sufficient funds in Capital Improvement Project No. 8135, Miscellaneous City Improvements for this purchase.)

Recommendation: Award the bid and authorize the City Manager to execute a contract with De Martinez Painting to paint the Corporation Yard and Fleet Maintenance Buildings for the not to exceed amount of \$60,250.00, subject to approval as to form by the City Attorney.

XXII. CLAIMS AND DEMANDS

***13. Approve Five Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Chris Schroeder, 586-3161)**

Background: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$2,807.50 to Saddle Point Systems for the purchase of a Fastback Model 15XS Document Binder and a matching PowisPrinter Spine Printer Model P31. The machines were installed in the Print Shop on 3/25/03 on a month-to-month trial basis. 50% of the rental amount (\$3,982.50) is applicable toward the purchase price of \$6,790.00. The City Clerk has elected to buy the equipment with the final pay off being \$2,807.50. (Funds are available for this purchase from the City Clerk's operating budget.)
2. \$15,242.36 to John Deere Landscapes for the purchase of one (1) Rainmaster Evolution DX2 irrigation controller 13 and one (1) sub-controller 13-1. Both items were stolen on 10/07/05. The controller handles the watering of 52 irrigation stations that represent over four acres of median landscaping from the Treatment Plant north to the City border at Dixon Landing Road. This area consists of mature landscape, which means that if the controllers were not replaced quickly, significant damage could be done to the landscaping. A new tamper resistant double lock system has been installed on the controller cabinet to deter theft. Replacement of the equipment was performed as an emergency under section I-2-5.04 of the Municipal Code "Emergency Authority of Purchasing Agent". (Funds are available for this purchase from the Public Works operating budget.)

3. \$5,758.90 to Ewing Irrigation for the purchase of four (4) backflow prevention device enclosures. The enclosures are stainless steel cages that protect the backflow valves from harsh weather and vandalism. The enclosures were stolen from the median landscape on North Milpitas Blvd. on 10/07/05. New tamper resistant double locking hinges have been installed on the cages to deter theft. Replacement of the equipment was performed as an emergency under section I-2-5.04 of the Municipal Code "Emergency Authority of Purchasing Agent" (Funds are available for this purchase from the Public Works operating budget.)
4. \$14,099.56 to Synchronex Inc. for the purchase of traffic control components that had to be replaced due to a lightening strike at the Tasman/Alder, I-880 north bound and south bound off ramps. The work was performed as an emergency under section I-2-5.04 of the Municipal Code "Emergency Authority of Purchasing Agent". (Funds are available in the Public Works operating budget for this purchase).
5. \$5,412.50 to The Active Network for the renewal of the Safari (class registration) software annual maintenance coverage for the periods 10/30/05 through 10/30/06. Due to the proprietary nature of the software, staff is requesting that this be a sole source procurement as sanctioned in section I-2-5.03-4 of the Milpitas Municipal Code. (Funds are available in the Information Services operating budget for this purchase).

Recommendation: Approve the payment requests.

XXIII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, NOVEMBER 18, 2005, AT 7:00 P.M.**